

No. 13-2014 RV

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

Findings of Fact

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. On June 26, 2013, Liu renewed the registration and license plates on a motor vehicle for a two-year period, August 1, 2013 through July 31, 2015.
2. In November 2013, Liu sold his motor vehicle and requested a refund of \$68.69 for those license plates.
3. On November 20, 2013, the Director issued a final decision denying Liu's refund request.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.¹ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.² Liu argues that a refund is appropriate because the fees were paid for license plates that will never be used. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.³ "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit."⁴

¹Section 621.050.1, RSMo 2000.

²*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

³*Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. 1990).

⁴*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

Section 301.140⁵ provides:

2. In the case of a transfer of ownership *the original owner* may register another motor vehicle under the same number, upon the payment of a fee of two dollars, if the motor vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that originally registered. When such motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, applicant shall pay a transfer fee of two dollars and a pro rata portion for the difference in fees. When such vehicle is of less horsepower, gross weight or (in case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **applicant shall not be entitled to a refund.**

3. License plates may be transferred from a motor vehicle which will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. The owner shall pay a transfer fee of two dollars if the newly purchased vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that of the vehicle which will no longer be operated. When the newly purchased motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, the applicant shall pay a transfer fee of two dollars and a pro rata portion of the difference in fees. When the newly purchased vehicle is of less horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **the applicant shall not be entitled to a refund.**

* * *

8. Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle. Such credit shall be granted based upon the date the license plates are surrendered. **No**

⁵ RSMo Cum. Supp. 2012.

refunds shall be made on the unused portion of any license plates surrendered for such credit.

(Emphasis added.) Section 301.121⁶ provides:

1. When the owner of a commercial motor vehicle registered in excess of fifty-four thousand pounds returns the license plates to the director of revenue as provided in section 301.120, but not for a license suspension or revocation, the owner shall receive a refund or credit of any pro rata amount to be determined by the calendar quarters remaining before expiration of the license plates. Such refund or credit shall be granted based upon the date the license plates are surrendered to the director of revenue. Any credit or refund may be applied toward any subsequent application for a Missouri registration only if a commercial motor vehicle. Any refunded portion of a registration fee which was distributed according to the provisions of article IV, section 30(b) of the Constitution of Missouri shall be refunded proportionately from state, city and county funds.

Several provisions in § 301.140⁷ allow an owner to transfer license plates from one motor vehicle to another. However, in this case, Liu did not transfer license plates and every provision on this subject in § 301.140 expressly denies a refund.

Section 301.121 provides for a refund of certain amounts paid when a license plate is surrendered. This section, however, does not apply to Liu because it only applies to commercial vehicles registered in excess of fifty-four thousand pounds. Liu did not allege in his complaint that the motor vehicle in question is a commercial vehicle in excess of fifty-four thousand pounds. Furthermore, in his response to the Director's motion, he did not allege new facts or deny the allegations in his complaint. He merely stated that he received our Notice of Complaint, a copy of the Director's motion, requested the assignment of an impartial commissioner to this case, and requested that we send him originals of all documents. We cannot provide Liu with the originals of documents, but do note that the original of the Director's

⁶ RSMo. Cum. Supp. 2012.

⁷ § 301.140.2, .3, and .8.

final decision that he requests was sent to him by the Director prior to his appeal to this Commission.

We have found no provision of law allowing a refund to Liu, nor does Liu direct us to any such provision. Neither the Director nor this Commission can change the law.⁸ We have no authority to allow a refund under these circumstances.

Summary

Liu is not entitled to a refund of fees paid for the renewal of license plates to his motor vehicle.

SO ORDERED on December 12, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁸*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. 1985).